THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 12308 of 2005

Dated: 01.09.2005

Between:

1. Nallan Chakravarthy Srinivasa Chary, S/o.Late N.C.Venkata Chary outside Gowlipura Hyderabad-53 and others.

..... PETITIONERS

AND

1 Nallan Chakravarthy Jayalaxmi W/o.Late N.C.Venkata Chary C/o.T.V.Narsimha Charyulu, H.No.18-7-713, Kodhada Ramaswamy, Devasthanam Temple outside Gowlipura Hyd-53 and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 12308 of 2005

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ORDER:

This writ petition has been filed by the writ petitioners, who are three in number, assailing the order of the Joint Collector, R.R. District passed in Case.No.F1/7646/2003 dated 10.05.2005 as well as the order passed by the Special Grade Deputy Collector and Revenue Divisional Officer, R.R. East Division in Lr.No.J/3059/98, dated 30.07.2003.

The brief facts of the case giving rise to filing of the writ petition by the writ petitioners are:

One Ranga Chary was the Inamdar in respect of Ac 93.00 cents comprising survey Numbers.799, 800,801, 802, 803, 804, 805, 806, 807, 808, 811, 812, 830, 854, 855, 856, 857 & 862 situated at Nandiwanaparthy village, R.R.District. Ranga Chary died about 35 years ago, leaving behind his son Venkata Chary. The said Venkata Chary had two wives namely Nallan Chakravarthy Jaya Laxmi and Nirmalamma. Through Jaya Lakshmi he has one daughter and through Nirmalamma he has three sons and two daughters. The three sons are the writ petitioners whereas the 1st wife is arrayed as 1st respondent. All the petitioners have filed applications for grant of occupancy certificate before the Revenue Divisional Officer under Section 4 of the A.P. Telangana area, Abolotion of Inams Act, 1955 (for brevity 'the Act').

It appears that petitioner No.1 claimed occupancy certificate in respect of Ac.15.19 guntas, petitioner No.2 claimed occupancy certificate in respect of Ac. 26.32 guntas and petitioner No.3 claimed occupancy certificate in respect of 17.12 guntas. Occupancy certificates in favour of 2nd and 3rd petitioners are stated to have been granted, while the application of petitioner No.1 was pending, the 1st wife of Venkata chary filed an application before the Revenue

Divisional Officer under Section 4 of the Act for grant of occupancy certificate by invoking the jurisdiction of A.P.Telangana Area, Abolition of Inams Act, 1955. The writ petitioners herein were arrayed as respondents in the application filed by her.

Chakravarthy Jaya Lakshmi-1st respondent herein contended before the Special Grade Deputy Collector and Revenue Divisional Officer that Nirmalamma had two sons by the time she joined association with Venkata chary and therefore, her two sons are not entitled to claim any share in the properties of Venkatachary. The Revenue Divisional Officer rejected the contention and allowed her claim in respect of the said lands to the extent of 1/4th share of the properties possessed by Venkata chary. Assailing the order passed by the Revenue Divisional Officer, the petitioners herein filed an appeal under Section 24 of the A.P (Telanganga) Abolition Act, 1955 before the Joint Collector, R.R.Dsitrict.

The appellate authority on considering the material brought on record, did not find any reason to interfere with the order and accordingly, dismissed the appeal. The Operative portion of the order passed by the appellate authority reads as follows:

> *On perusal of the Lower Court record it is found that the husband of the respondent and father of the appellant was in possession and cultivation of the suit lands as on 1.11.1973 as such the Revenue Divisional officer has issued Occupancy Rights Certificate to an extent of 1/4th share in favour of the appellants. Thus there are no irregularities committed by the Lower Court. Therefore, the appeal filed by the appellants is dismissed.*

Assailing the order of the appellate authority, the petitioners have filed this writ petition.

Heard the learned counsel for the petitioners and the learned counsel appearing for the 1st respondent.

It is the contention of the petitioners that the petitioners being the sons of Venkata chary are entitled to claim 1/4th share each and whereas Vekata chary is entitled to 1/4th share, which is again to be re-distributed among the

petitioners, 1st respondent and three daughters, who are not parties to the proceedings. He further contends that the appellate authority having mentioned the Genealogy in page 11 of the order impugned has not correctly allotted the shares in the property in accordance with law applicable to them.

Whereas it is contended by the learned for the 1st respondent that the petitioners 1 and 2 are not the sons of Venkata chary and by the time Nirmalamma joined with Venkata chary, she was the mother of two children, who are no other than the petitioners 1 and 2 and therefore, the petitioners are not entitled to claim any share in the properties possessed by Venkata chary. The same contention was advanced before the Revenue Divisional Officer. The Revenue Divisional Officer repelled her contention and allotted the shares to the petitioners. Therefore, I do not find any substance in the contention raised by the 1st respondent that the petitioners 1 and 2 are not the sons of Venkata Chary. It is no more in dispute that the parties are Hindus and they are governed by the provisions of the Hindu Succession Act. The partition of the properties possessed by Venkata Chary, opens on the date of his death. He was survived by his first wife Chakravarthy Jaya Laxmi and a daughter through her, and three sons and two daughters through his second wife Nirmalamma. All of them are entitled to get their due shares in accordance with law applicable to them. The Joint Collector having referred the Zeanology in page 11 of the impugned order in the writ petition has not correctly computed the respective shares to the parties to the proceedings.

In the circumstances, I deem it appropriate to allow the writ petition, setting aside the order of the 2nd respondent-Joint Collector, R.R.District as well as the 3rd respondent- Special Grade Deputy Collector and Revenue Divisional Officer for re-computation of the shares to the legal heirs of Venkata Chary in accordance with law applicable to them. The 3rd respondent is directed to dispose of the matter within a period of 2 (two) months from the date of receipt of a copy of this Order.

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01.09.2005

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